IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 4353 of 2005

Nicholas V.Menezis ..Petitioner

vs.

1. Nainaram Jivaji Ghelot
and another ..Respondents

Shri S.B.Shetye for petitioner
Shri S.M.Gorwadkar for respondents.

CORAM: S.B.MHASE J.
21st April, 2006

P.C.

1. Heard the learned Counsel.

2. Special Civil Suit No.237 of 1993 was decreed in favour of the petitioner whereby the respondents are directed to hand over possession of 40 sq.f.t portion of the suit premises. While the decree was put up in execution it was revealed that the judgment debtor is in possession of 80 sq.ft. and, therefore, the petitioner was insisting to get possession of 80 sq.ft. on the basis of the decree. However, the Executing Court has observed that the Court cannot go beyond the decree. However, while passing the order dated 24th July, 2004, inthe last sentence of the said order, the Court observed that: "The J.D.is entitled to portion of 40 sq.ft. of suit shop" and the said portion is challenged before this Court.

3. Needless to say that the Executing Court is bound by the decree and cannot go beyond the decree. Therefore, on

the basis of the said decree, 80 sq.ft. portion cannot be handed over to the petitioner. However, 40 sq.ft. portion which is found to be in excess of the decree with the respondent judgment debtor; since it was not the subject matter of the suit, the Court should not have made any observations in respect of it in execution petition. The last sentence referred to above gives an impression that as if those 40 sq.ft. have been given by the Court to the judgment debtor. In fact in respect of that portion, the plaintiff is entitled to file, if he desires, a separate suit and the defendant is equally entitled to contest the said suit with all possible defence open to him. With this clarification the petition is disposed of.

(S.B.MHASE J.)